

Message Text

LIMITED OFFICIAL USE

PAGE 01 BRASIL 02874 01 OF 02 101920Z
ACTION ARA-14

INFO OCT-01 ISO-00 L-03 AID-05 CIAE-00 COME-00 EB-08
FRB-03 INR-10 NSAE-00 ICA-11 TRSE-00 XMB-02
OPIC-03 SP-02 LAB-04 SIL-01 OMB-01 NSC-05 SS-15
STR-07 CEA-01 /096 W
-----073102 101936Z /47

R 101850Z APR 78
FM AMEMBASSY BRASILIA
TO SECSTATE WASHDC 7037
INFO AMCONSUL RIO DE JANEIRO
AMCONSUL SAO PAULO

LIMITED OFFICIAL USE SECTION 1 OF 2 BRASILIA 2874

E.O. 11652: N/A
TAGS: EFIN, BR
SUBJ: GOB/MORGAN GUARANTY RESOLVE DISAGREEMENT OVER JURISDICTION

REF: A) BRASILIA 10761 77
B) BRASILIA 0594
C) BRASILIA 0927

1. TALKS WITH MORGAN GUARANTY REPRESENTATIVES, MINISTRY OF FINANCE LEGAL ADVISOR, AND CENTRAL BANK OFFICIALS CONFIRM THAT GOB AND MORGAN HAVE RESOLVED PROBLEM RAISED BY MORGAN WITH REGARD TO TERRITORIAL JURISDICTION IN CASE OF DEFAULT OR OTHER LEGAL QUESTIONS ON LOANS TO BRAZIL.

2. LEGAL ADVISOR IN MINISTRY OF FINANCE HAS EXPLAINED THAT GOB COULD NOT ACQUIESCE TO MORGAN DEMAND THAT LOAN CONTRACT EXPLICITLY RECOGNIZE JURISDICTION OF U.S. COURTS ON LOANS TO OR GUARANTEED BY THE GOVERNMENT; I.E., THE BRAZILIAN CONSTITUTION WILL NOT PERMIT EXPLICIT SURRENDER OF SOVEREIGNTY IN A LOAN CONTRACT. AGREED SOLUTION IS TO INCLUDE CLAUSE PROVIDING FOR
LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 02 BRASIL 02874 01 OF 02 101920Z

RECOURSE TO AN ARBITRATION PANEL, WHICH WOULD CONSIST OF ONE PARTICIPANT DESIGNATED BY MORGAN, ONE BY THE GOB AND, IN THE EVENT THOSE TWO CANNOT AGREE ON A THIRD PARTICIPANT, THE THIRD ARBITRATOR WOULD BE DESIGNATED BY THE PRESIDENT OF THE WORLD BANK. THE GOB PROPOSED THIS APPROACH TO THE IBRD, WHICH ACCEPTED THE POSSIBLE ROLE IMPLIED BY THE NEW LOAN

PROVISION.

3. CENTRAL BANK DIRECTOR FERNAO BRACHER CONFIRMED THAT THE ISSUE RAISED BY MORGAN HAS BEEN RESOLVED AMICABLY. HE SAID THAT BRAZIL HAS ALWAYS BEEN PREPARED TO ACCEPT INTERNATIONAL ARBITRATION AND THAT THE AGREEMENT WITH MORGAN WILL SIMPLY MAKE THAT POSITION EXPLICIT IN LOANS WITH MORGAN. GIVEN THE APPARENT LACK OF INTEREST DISPLAYED BY OTHER BANKS IN THE JURISDICTION ISSUE, BRACHER DOES NOT ANTICIPATE THAT OTHER BANKS WILL BEGIN TO INSIST ON A SIMILAR CLAUSE IN THEIR LOAN CONTRACTS. HE HAS SUGGESTED TO FINATT THAT THE QUESTION SEEMS TO RELATE TO A SUFFICIENTLY IMPROBABLE DETERIORATION OF BRAZIL'S ABILITY TO MANAGE ITS DEBT THAT MOST BANKS ARE NOT CONCERNED AND DO NOT RAISE IT IN CURRENT DISCUSSIONS OF NEW LOANS. SEVERAL BANKS REPS HAVE EXPRESSED THE SAME POINT IN TALKS WITH EMBASSY OFFICERS.

4. MORGAN GUARANTY REPS HAVE INDICATED THEIR PLEASURE THAT THE JURISDICTION ISSUE IS BEHIND THEM. THEY HAVE COMMENTED THAT THE DISPUTE WAS COMPLETELY LEGAL IN CHARACTER AND DID NOT REFLECT THEIR JUDGMENT ON BRAZIL'S CREDITWORTHINESS. MORGAN CONTINUED LENDING TO BRAZILIAN PRIVATE ENTITIES AFTER PULLING OUT OF THE SYNDICATED LOAN FOR LIGHT IN DECEMBER 1977 BECAUSE OF THE LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 03 BRASIL 02874 01 OF 02 101920Z

JURISDICTION PROBLEM ON LOANS TO OR GUARANTEED BY THE GOB. THE MORGAN REPS ACKNOWLEDGE THAT THE PRESS DISCUSSION OF THE DIFFERENCES AND THE EARLY PUBLIC RELATIONS HANDLING OF THE MATTER BY MORGAN ADVERSELY AFFECTED THAT BANK'S IMAGE IN BRAZIL. THE LOCAL REPS EXPRESSED THE OPINION THAT THE BLAME RESTS LARGELY WITH THE QUOTE INEXPERIENCED END QUOTE LEAD BANK IN THE LIGHT LOAN, THE WEST DEUSCHE LANDESBANK GIROZENTRALE. CENTRAL BANK DIRECTOR BRACHER BELIEVES THAT MORGAN DID NOT INTEND TO TRIGGER A CONFRONTATION BUT FELT OBLIGED TO TAKE A FIRM POSITION ONCE THE PRESS REPORTED THE DISAGREEMENT. MINISTRY OF FINANCE SPOKESMEN IN PRIVATE HAVE BEEN LESS GENEROUS, SAYING THAT MORGAN'S ACTION WAS UNWARRANTED AND POORLY ARTICULATED AT A VERY LATE STAGE IN THE PREPARATION OF THE LIGHT LOAN. THEY HAVE NOTED THAT THE LOAN WAS OVERSUBSCRIBED AND THEY HAVE SAID CONFIDENTIALLY THAT IF MORGAN DID NOT WANT TO PARTICIPATE ON THE SAME TERMS AS OTHER BANKS, THEY MORGAN COULD SIMPLY STAY OUT.

LIMITED OFFICIAL USE

NNN

LIMITED OFFICIAL USE

PAGE 01 BRASIL 02874 02 OF 02 101921Z
ACTION ARA-14

INFO OCT-01 ISO-00 L-03 AID-05 CIAE-00 COME-00 EB-08
FRB-03 INR-10 NSAE-00 ICA-11 TRSE-00 XMB-02
OPIC-03 SP-02 LAB-04 SIL-01 OMB-01 NSC-05 SS-15
STR-07 CEA-01 /096 W
-----073096 101935Z /47

R 101850Z APR 78
FM AMEMBASSY BRASILIA
TO SECSTATE WASHDC 7038
INFO AMCONSUL RIO DE JANEIRO
AMCONSUL SAO PAULO

LIMITED OFFICIAL USE SECTION 2 OF 2 BRASILIA 2874

5. THE SENIOR MORGAN REP IN BRAZIL, ROBERT BARBOUR HAS ACKNOWLEDGED PRIVATELY THAT IN FACT MORGAN QUOTE LOST OUT ON FOUR OR FIVE GOOD LOANS END QUOTE WHILE THE JURISDICTION MATTER WAS BEING DISCUSSED IN JAN-MARCH 1978. HE HAS INFORMED THE EMBASSY (AND GOB AUTHORITIES HAVE CONFIRMED) THAT MORGAN NOW IS DEFINITELY BACK IN BUSINESS IN BRAZIL. MORGAN IS THE LEAD BANK IN A TWO-PART LOAN CURRENTLY BEING CLOSED FOR THE HYDROELECTRIC PROJECT ITAIPU. THE OPERATION REPORTEDLY WILL CONSIST OF DOLS 100 MILLION FOR 10 YEARS AT 1 3/4 PERCENTAGE POINTS OVER LIBOR AND DOLS 75 MILLION FOR 12 YEARS AT A 1 7/8 SPREAD. BOTH PARTS REPORTEDLY WILL HAVE 6 YEARS GRACE PERIOD. THESE LOANS WILL HAVE THE GUARANTY OF THE REPUBLIC OF BRAZIL AND WILL INCLUDE THE ARBITRATION CLAUSE. THET REPRESENT THE FIRST MORGAN LOANS DIRECTLY INVOLVING THE GOB SINCE THE BEGINNING OF THE JURISDICTION PROBLEM IN DECEMBER 1977.

6. MORGAN ALSO IS REPORTEDLY ATTEMPTING TO ARRANGE A DOLS 50-60 MILLION LOAN FOR THE GOB WHICH WOULD UTILIZE FUNDS FROM THE U.S.
LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 02 BRASIL 02874 02 OF 02 101921Z

INSTITUTIONAL INVESTORS MARKET AND PERMIT A FIXED INTEREST RATE AND LONG MATURITY. THIS OPERATION IS STILL UNDER DISCUSSION

BUT THE PROSPECTS FOR CONSUMPTION ALREADY ARE CLEARLY SATISFY-
ING TO THE BRAZILIAN AUTHORITIES, WHO HAVE
BEEN ANXIOUS TO TAP U.S. PENSION FUNDS AND OTHER
INSTITUTIONAL INVESTORS.

7. COMMENT: THE DISAGREEMENT WITH MORGAN HAS
TARNISHED THAT BANK'S IMAGE SOMEWHAT AMONG GOB
POLICY-MAKERS. HOWEVER, MUTUAL EFFORTS TO PUT THEIR
RELATIONS BACK ON TRACK HAVE RESULTED IN AGREEMENT
ON RECOURSE TO ARBITRATION AND PERMITTED MORGAN
TO RETREAT WITHOUT IRREPARABLE DAMAGE TO ITS RELATIONS
WITH BRAZIL. GIVEN EXISTING LIQUIDITY IN THE BANKING
COMMUNITY, MORGAN REMAINED ALONE IN ITS EFFORTS AND
IS NOW TRYING TO MAKE UP FOR LOST GROUND. ASSUMING
NO FURTHER SUCH PROBLEMS, MORGAN UNDOUBTEDLY WILL
REMAIN AS ONE OF BRAZIL'S MOST IMPORTANT SOURCES
OF PRIVATE FOREIGN FINANCIAL RESOURCES.
JOHNSON

LIMITED OFFICIAL USE

NNN

Message Attributes

Automatic Decaptioning: X
Capture Date: 01 jan 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: ARBITRATION, LOAN GUARANTEES, CONTRACTS, BANKS
Control Number: n/a
Copy: SINGLE
Draft Date: 10 apr 1978
Decaption Date: 01 jan 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 20 Mar 2014
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1978BRASIL02874
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Expiration:
Film Number: D780154-0390
Format: TEL
From: BRASILIA
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1978/newtext/t19780476/aaaacmgk.tel
Line Count: 188
Litigation Code IDs:
Litigation Codes:
Litigation History:
Locator: TEXT ON-LINE, ON MICROFILM
Message ID: 479caab3-c288-dd11-92da-001cc4696bcc
Office: ACTION ARA
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 4
Previous Channel Indicators: n/a
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: 78 BRASILIA 10761
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 05 may 2005
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: N/A
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 3024857
Secure: OPEN
Status: NATIVE
Subject: GOB/MORGAN GUARANTY RESOLVE DISAGREEMENT OVER JURISDICTION
TAGS: EFIN, BR, MORGAN GUARANTY
To: STATE
Type: TE
vdkgvwkey: odbc://SAS/SAS.dbo.SAS_Docs/479caab3-c288-dd11-92da-001cc4696bcc
Review Markings:
Sheryl P. Walter
Declassified/Released
US Department of State
EO Systematic Review
20 Mar 2014
Markings: Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014